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NO. 84-1736

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

MIGUEL HIJAR, SUPERINTENDENT, FEDERAL PRISON CAMP AT BORON, CALIFORNIA,
Petitioner,

-vs-

JAMES ROBERT BURRUS,
Respondent,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE STATE OF ARIZONA IN SUPPORT OF PETITIONER, AMICUS CURIAE

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14 pp

Questions Presented

1. Whether a federal prisoner may bring an action in federal district court to enjoin his warden from complying with a request by a state prosecutor for temporary custody of the prisoner pursuant to the Interstate Agreement on Detainers (IAD) on the ground that the indictment allegedly is invalid because of prior violations of the IAD by the requesting state, or whether the prisoner instead must challenge the validity of the indictment in the court of the requesting state that has jurisdiction of the indictment.

2. Whether under the "anti-shuttling" provisions of the IAD, a state that has received custody of a prisoner pursuant to the IAD must retain him in its custody while it appeals the granting of the prisoner's motion to dismiss the charges against him or suffer a forfeiture of the right to prosecute him.

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INTEREST OF AMICUS CURIAE

The State of Arizona, through its Attorney General, respectfully offers this brief as amicus curiae in support of the petitioner. The amicus curiae has attempted to obtain temporary custody of the respondent, James Robert Burrus, pursuant to the Interstate Agreement on Detainers in order to try him on certain state criminal charges. However, the United States District Court has issued a permanent injunction forbidding the petitioner from releasing the respondent from federal custody to the temporary custody of the State of Arizona. Therefore, the amicus curiae has a profound interest in the resolution of the issues before the Court.[1]

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1. The amicus curiae has obtained the consent of both parties to file this brief. A written consent from respondent will be provided as soon as amicus curiae receives it from respondent's counsel, who has given his verbal consent.

ARGUMENT

On May 15, 1979, the State of Arizona obtained an indictment charging James Robert Burrus with one count of fraudulent schemes and five counts of forgery. Mr. Burrus was a fugitive from justice at the time, but he was subsequently arrested in Idaho on a federal charge.

Upon learning that Mr. Burrus was in federal custody, the State of Arizona on July 3, 1980, began efforts to obtain temporary custody of Mr. Burrus pursuant to the Interstate Agreement on Detainers (IAD). After much delay occasioned by Mr. Burrus, federal correctional officials released Mr. Burrus on February 11, 1981, to the temporary custody of the State of Arizona. The state arraigned Mr. Burrus on the pending charges and, after several postponements, trial was set for May 21, 1981.

On that date Mr. Burrus moved to dismiss the indictment with prejudice, arguing that the state's speedy trial time limits[2] had passed. Over the state's opposition, the trial court granted Mr. Burrus' motion and dismissed the indictment with prejudice. The trial court also ordered that Mr. Burrus be returned to federal custody.

The State of Arizona appealed the trial court's dismissal of the indictment. On October 7, 1982, the Arizona Court of Appeals reversed and remanded the matter for trial. See State v. Burrus, 134 Ariz. 251, 655 P.2d 371 (Ct.App. 1982). Burrus was unsuccessful in his effort to get the Arizona Supreme Court to review the lower court's decision, and on December 22, 1982, the Arizona Court of Appeals issued its mandate.

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2. See Rule 8.3(a), Arizona Rules of Criminal Procedure.

The State of Arizona immediately initiated efforts to reobtain temporary custody of Mr. Burrus. Mr. Burrus opposed these efforts and filed a motion to dismiss the indictment arguing under Articles III(d) and IV(e) of the IAD that his return to federal custody before trial required the trial court to dismiss the indictment with prejudice. The trial court denied this motion on January 12, 1983. Mr. Burrus then filed another motion to dismiss, arguing that he had not been brought to trial within the 180-day time limit of Article III of the IAD. The trial court denied this motion on January 31, 1983.

In the meantime, on January 18, 1983, Mr. Burrus filed a petition for writ of habeas corpus in the United States District Court for the Northern District of California under 28 U.S.C. § 2241. The State of Arizona was not a party to

this action. Mr. Burrus sought an order enjoining the federal correctional authorities from releasing him to the temporary custody of the State of Arizona. On March 7, 1983, the district court granted the requested injunction.

On March 24, 1983, the state trial court granted Mr. Burrus' request to reconsider its order of January 31, 1983, and dismissed the indictment with prejudice under the IAD's 180-day speedy trial provision. The State of Arizona appealed that order. Mr. Burrus cross-appealed from the trial court's denial of his motion to dismiss under the anti-shuttling provision of the IAD.

On September 25, 1984, the Ninth Circuit affirmed the judgment and permanent injunction entered by the District Court. Burrus v. Turnbo, 743 F.2d 693 (9th Cir. 1984). The court of appeals subsequently denied a petition

for rehearing and rejected a suggestion for rehearing en banc.

In its efforts to prosecute Mr. Burrus, the State of Arizona has at all times attempted to comply with the provisions and the spirit of the IAD. When Mr. Burrus first succeeded in inducing the trial court to dismiss the indictment against him, the State of Arizona returned Mr. Burrus to federal custody while the state pursued its right of appeal. When the State of Arizona established that the dismissal had been erroneous, it attempted to reobtain custody of Mr. Burrus. However, it found its efforts blocked by Mr. Burrus, who went to federal district court for relief in a proceeding to which the state was not a party. Once the federal district court granted Mr. Burrus' requested injunction, the state trial court dismissed the indictment based on an

alleged violation of the IAD's 180-day time limits. Once again, the state sought relief through its right of appeal. However, the Arizona Court of Appeals is staying any resolution of that appeal until the Ninth Circuit's affirmance of the injunction becomes final or this Court overturns that decision.

The State of Arizona supports the position advanced by the petitioner in this matter. The federal district court and the court of appeals should not have interfered in Arizona's efforts to prosecute Mr. Burrus. And, once the federal courts did intervene, they erred in ruling that the anti-shuttling

provisions of the IAD preclude Arizona from trying Mr. Burrus.[3] The State of Arizona remains ready to try Mr. Burrus, and asks this Court to grant the petition for writ of certiorari.

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3. The State of Arizona maintains its position that Mr. Burrus was transferred to state custody pursuant to Article IV rather than Article III of the IAD. However, resolution of that point is not essential to the resolution of the petition before this Court.

A F F I D A V I T

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

GERALD R. GRANT, a member of the Bar of this Court, being first duly sworn upon oath, deposes and says:

That he served three copies of the Petition for Writ of Certiorari upon JAMES HEWITT, Federal Public Defender, 450 Golden Gate Avenue, 17th Floor, San Francisco, California, 94102, and REX E. LEE, Solicitor General, STEPHEN S. TROTT, Assistant Attorney General, ANDREW L. FREY, Deputy Solicitor General, EDWIN S. KNEEDLER, Assistant to the Solicitor General, PATTY MERKAMP STEMLER, Attorney, Department of Justice, Washington, D.C. 20530, by depositing the same in the United States Mail, with first class postage prepaid, return receipt requested.

Gerald R. Grant

GERALD R. GRANT

SUBSCRIBED AND SWORN to before me this 4th day of June, 1985.

Susan C. Lewis

SUSAN C. LEWIS
NOTARY PUBLIC

My Commission Expires:

October 17, 1988

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